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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,970

12/21/2005

Harald Albrecht

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EXAMINER

HELM, CARALYNNE E

ART UNIT

PAPER NUMBER

1615

NOTIFICATION DATE

DELIVERY MODE

04/21/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,970	<b>Applicant(s)</b> ALBRECHT ET AL.	
	<b>Examiner</b> CARALYNNE HELM	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/21/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 and 10-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-3 and 10-11 contain improperly constructed Markush groups. "The transitional phrases "comprising", "consisting essentially of" and "consisting of" define the scope of a claim with respect to what unrecited additional components or steps, if any, are excluded from the scope of the claim...the court noted the phrase 'group consisting of' is a closed term, which is often used in claim drafting to signal a 'Markush group' that is by its nature closed." See MPEP 2111.02. Presently the recited listing of alternative limitations in the claims do not use closed claim language.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 6-13, 17-18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malik et al. (U.S. Patent No. 4,668,422) in view of Hagan et al. (EP 0559375 – see IDS).

Malik et al. teach a cosmetic cleansing composition with sodium  $\alpha$ -olefin sulfonate, sodium lauryl sarcosinate, ammonium chloride, water, and other auxiliary ingredients (see example 15 and column 2 lines 58-62; instant claims 1, 3, 8-9, and 11). In addition, Malik et al. also teach that the concentration of the surfactants together is 11% and the ammonium chloride constitutes 2% of the composition (see example 15; instant claim 1). In addition, Malik et al. also teach the inclusion of preservatives in their invention (see column 7 lines 16-20; instant claims 4 and 12-13). Further, Malik et al. teach that ammonium chloride as well as carboxymethyl

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cellulose, polyacrylic acid and other cellulose ethers serve as thickeners in the composition (see column 7 lines 2-15; instant claims 1-2). Malik et al. go to teach that the composition of the invention produces a soft feel on the hands when used to wash hands, implying the step of applying the product to the skin (see column 9 lines 38-40; instant claims 7 and 20). Malik et al. do not specifically teach the inclusion of the taught hydrocolloids and a salt, simultaneously, as thickeners in the composition, the amount of preservative that should be employed, nor the vessel in which the composition is stored. Hagan et al. teach a bath foam that uses both sodium chloride and sodium carboxymethyl cellulose as thickeners (see example 15). Hagan et al. use this hydrocolloid at 1% (see example 15; instant claim 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use multiple thickeners, namely the salt along with a described polymeric thickener, in the invention of Malik et al. since the viscosity of the final preparation was a variable that would be obvious to optimize through routine experimentation and was within the purview of the ordinarily skilled artisan. Further, Hagan et al. teach the inclusion of preservative in their cleansing composition at 0.3% (see example 15; instant claims 4 and 12). Hagan et al. teach go on to teach that the cleansing compositions are dispensed from an aerosol dispenser (can) (see page 11 lines 19-21; instant claims 6 and 17-18). Since both Hagan et al. and Malik et al. teach foaming cosmetic compositions (see Malik et al. column 9 lines 9-12) , it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teachings of Hagan et al. in the invention of Malik et al. to guide the amount of preservative used as well as the vessel used to store and potentially dispense the composition for use. Therefore claims 1-4, 6-13, 17-18, and 20 are obvious over Malik et al. in view of Hagan et al.

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Claims 1-2, 4-5, 8, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malik et al. in view of Hagan et al. as applied to claims 1-4, 6-13, 17-18, and 20 above, and further in view of Furman et al. (U.S. Patent No. 5,883,059).

Malik et al. in view of Hagan et al. make obvious a composition with sodium  $\alpha$ -olefin sulfonate, sodium lauryl sarcosinate, ammonium chloride, hydrocolloid (cellulose ethers), water, and preservative, with the surfactants at 11%, the ammonium chloride at 2%, the hydrocolloid at 1%, and the preservative at 0.3% (instant claims 1-2, 4, and 8). Malik et al. also teach the presence of cocoamido monoethanol amine (also known as cocoamide MEA) in the exemplified composition (see example 15). Furman et al. teach that cocoamide MEA is a nonionic surfactant (see claim 4 part e). Surfactants are known for their ability to solubilize poorly water soluble compounds. Therefore the taught cocoamino monoethanol amine in the invention of Malik et al. is a solubilizer (instant claims 5 and 14-16). Thus claims 1-2, 4-5, 8, and 14-16 are obvious over Malik et al. in view of Hagan et al. and Furman et al.

Claims 1-2 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malik et al. in view of Hagan et al. as applied to claims 1-4, 6-13, 17-18, and 20 above, and further in view of Scholz et al. (U.S. Patent No. 6,641,825).

Malik et al. in view of Hagan et al. make obvious a composition with sodium alpha olefin sulfonate, sodium lauryl sarcosinate, ammonium chloride, hydrocolloid (cellulose ethers), water, and preservative, with the surfactants at 11%, the ammonium chloride at 2%, the hydrocolloid at 1%, and the preservative at 0.3% (instant claims 1-2, 4, and 8). Malik et al. teach that thickeners are to be used to modify the viscosity of their invention to a particular level (see column 7 lines 2-15). Scholz et al. teach a cleansing cosmetic composition where thickeners are also used and particularly exemplify montmorillonites as one particular thickener suitable for such a

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composition (see abstract and column 3 lines 62). A person of ordinary skill in the art would have good reason to pursue the options within their technical grasp. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use montmorillonites as the second, hydrocolloid, thickener along with the ammonium chloride salt in the composition taught by Malik et al. in view of Hagan et al. in order to achieve the desired end viscosity. Therefore claims 1-2 and 19 are obvious over Malik et al in view of Hagan et al. and Scholz et al.

### ***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARALYNNE HELM whose telephone number is (571)270-3506. The examiner can normally be reached on Monday through Thursday 8-5 (EDT).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Caralynne Helm/  
Examiner, Art Unit 1615

/Michael P Woodward/  
Supervisory Patent Examiner, Art Unit  
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